CO/8173/2007

Neutral Citation Number: [2008] EWHC 2750 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Thursday, 15th May 2008

B e f o r e:

MR JUSTICE OUSELEY

Between:
MAJID

Claimant

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

Computer-Aided Transcript of the Stenograph Notes of
WordWave International Limited
A Merrill Communications Company
190 Fleet Street London EC4A 2AG
Tel No: 020 7404 1400 Fax No: 020 7831 8838
(Official Shorthand Writers to the Court)

Mr Z Nasim (instructed by Malik & Khans) appeared on behalf of the **Claimant**
Miss S Leek (instructed by the Treasury Solicitor) appeared on behalf of the **Defendant**

J U D G M E N T
(As Approved by the Court)

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1. MR JUSTICE OUSELEY: Mr Majid, the claimant, is a citizen of Pakistan who arrived in the United Kingdom as long ago as 1991. He claimed asylum shortly after his arrival as a visitor. His appeal against the refusal of asylum was dismissed in 1996. Notwithstanding its dismissal, nothing seems to have happened for five years when, in September 2001, he applied for leave to remain under the long residence concession policy, which was incorporated into the Immigration Rules in April 2003.

2. The Secretary of State refused the application in a decision letter of 30th May 2003 with an accompanying notice. The notice said that he had not provided evidence of ten years' continuous lawful residence in the United Kingdom, nor evidence of 14 years continuous residence in the United Kingdom. The leave which he had had expired in March 1996 and there was therefore no right of appeal against the decision. The only way an appeal could arise would be if the decision was an unlawful breach of Mr Majid's human rights.

3. In June 2003 solicitors for Mr Majid wrote claiming that his removal would be a breach of Article 8 because of the long period of time he had been in the country. On 5th August 2003 the Secretary of State therefore sent a notice of appeal to the claimant for him to complete, because of the allegation of a breach of human rights. He said that it was against this decision to remove the claimant that he had a right of appeal under section 82(2)(g) of the 2002 Nationality, Immigration and Asylum Act. He said that the human rights allegations and the claim under long residence should form the grounds of an appeal. There was a one stop warning requiring a formal statement of all the grounds upon which the claimant would rely.

4. By the same date, two notices were also served. One was an IS151A saying that the claimant was a person subject to administrative removal in accordance with section 10, as a person who had failed to observe the conditions of leave to enter or remain or who had used deception in seeking to remain here. There was an IS151B served on the same date, referring to that form, saying that as a consequence a decision had been taken to remove him from the United Kingdom and saying that the Secretary of State had decided to refuse the asylum or human rights claim for the reasons stated in the attached notice. No other document other than the one I have referred to was in fact attached.

5. The claimant appealed against these decisions by a notice of appeal dated 18th August 2003, relying upon his lengthy stay in the United Kingdom and Article 8 of the Human Rights Act. After that was served, and not long before the appeal was heard in August 2005, the Secretary of State wrote a letter dealing with the grounds of appeal providing the basis for his case in relation to Article 8.

6. The Immigration Judge noted that the appellant had not provided evidence of ten years continuous lawful residence and indeed had not provided evidence of 14 years continuous residence. Indeed, it was clear that the appellant was not asserting 14 years' continuous residence at that stage. The stance of the Home Office Presenting Officer appears to have been that the appeal was effectively under Article 8 only because he had not been long enough in the United Kingdom for the ten year policy to apply.

7. The appellant's representative referred to the fact that by the time the appeal was being heard, an application had been made under the 14-year limb of the long year residence rule. He told the Immigration Judge that no decision had been made on that application, which may very well have been one of a number of documents in the bundle before the Immigration Judge. The application was made, in fact on 26th May 2004. The Immigration Judge in his decision said that it was clear that the Secretary of State was correct in saying that the appellant had not been in the United Kingdom lawfully for ten years and that he did not accept evidence of 14 years' continuous residence. He concluded that there was no basis for the Article 8 claim to succeed, saying that Article 8 was not to be used as a means of recognising and rewarding industrious conduct. The appeal was therefore dismissed in September 2005.

8. The claimant chased for a decision on the 14-year application made in May 2004 in a letter of 29th May 2007, and repeated the chase in a letter of 14th June 2007. These letters added no further information in relation to either the 14-year claim or to any other allied Article 8 claim, although it must have been obvious that time had passed and the claimant remained in the United Kingdom doing what he had been doing before.

9. The Secretary of State issued a decision on 14th June 2007. He treated the application in relation to 14-year residence, it appeared, as a fresh claim. At all events, it is not clear that he did not do so. He rejected the claim on the ground that it fell outside the scope of paragraph 276A to D of the Rules, and of paragraph 276B(1)(b) in particular, because the IS151A notice to a person liable to removal had been served on 5th August 2003, by which time the claimant had been in the UK for 12 years and 4 months, and before he had accumulated 14 years continuous residence. Applying paragraph 276B, and treating the form IS151A as notice for the purposes of paragraph 276B(1)(b), that conclusion was inevitable and that is not the way in which the challenge to the Secretary of State's decision is made.

10. The Article 8 point was dealt with in this way, of which some further complaint is made. The Secretary of State said that no further consideration had been given to the Article 8 claims. They were fully considered at the appeal less than two years ago, by which time the claimant had actually been in the United Kingdom already in excess of 14 years. The Secretary of State then considered whether there was a basis for allowing the claimant to stay on compassionate grounds outside the Rules. He concluded that there was not.

11. The application was brought for judicial review belatedly in December 2007 and was refused on paper by Sir Michael Harrison who said that the decisions in the 14th June 2007 letter were unimpeachable.

12. There were extensive grounds attached to the renewal application, but Mr Nasim has raised, if I may say so, a further one upon which he has focused in his very able submissions. His primary contention is that the decision on the 14-year residence was critically dependent upon whether the IS151A to which the Secretary of State referred was a valid notice for the purposes of paragraph 276B(1)(b). He submitted that it could not be so because there was a failure to comply with the requirements of Regulation 4

of the Immigration (Notices) Regulations 2003 SI 2003/658. The requirements of those Regulations relate to procedures and forms for appealable immigration decisions. Regulation 4(1) requires written notice to be given to a person of any immigration decision taken in respect of him which is appealable. So far so good. Regulation 5 provides that such a notice is to include, or be accompanied by, a statement of the reasons for the decision to which it relates. Mr Nasim says that the IS151A and IS151B did not contain a statement of the reasons for the decision, nor were they accompanied by it, and accordingly the notice was invalid for the purposes of the Regulations and also invalid for the purposes of paragraph 276B(1)(b).

13. The first purpose of a written notice of an appealable decision is to convey the fact that an appealable decision has been made. That was done. The decision was conveyed along with the fact that it was an appealable decision. The question of whether there was a failure to comply with the requirement that the reasons be in or accompany the notice, is of a different order. It is not a requirement, breach of which, if breach there was, necessarily leads to the notice becoming invalid. The consequences of a failure to comply with a procedural obligation may vary, depending on the gravity of the breach and the nature of the obligation. In this case the claimant, on 18th August 2005, launched an appeal against that decision and pursued it through to the end without taking any point that the notice was invalid, if invalid it was, for the reasons which were first produced today at 14.15 hours. It was not with respect to Mr Nasim, foreshadowed in any of the grounds that were so extensively drafted.

14. In the light of that, and bearing in mind AIT authority dealing with this and certain other decisions on like areas where there are deficiencies in form, it is clear that the argument now that that notice was an invalid notice is quite untenable. But I go further than that. The argument was that it was the letter of March 2005, which contained the reasons in relation to the human rights, which should have been with the notice; but that was before the appellant had put forward his human rights claim in any significant manner. The Secretary of State's position was that the claimant had no leave to remain in the country and had been refused leave to remain under the long residence concession provision. That much was clear from the decision letter of 30th May 2003 with its accompanying notice of refusal. That notice specifically refers to paragraph 276B(1)(b) of the Immigration Rules, so it was perfectly clear to the appellant that, by reference to the relevant rules, he had been refused for a want of evidence in relation to the concession and he was told that he now had to leave the United Kingdom without delay. The letters of 5th August with the accompanying IS151A and B documents clearly relate to those letters and earlier notice. It would have been quite unnecessary for the Secretary of State to have to append the letters again to the two forms when they were served in August 2003.

15. The appellant suffered nothing in relation to his knowledge of the decision, its basis or its appeal. That reinforces the conclusion that the allegation that there was no notice validly given for the purposes of paragraph 276B is wrong. Besides, the crucial point in relation to that is that the claimant be told that he must go, and at the same time understand what right of appeal has. Those crucial requirements for the purposes of paragraph 276B were met, whatever other problems they might have created to a very legalistic minded lawyer.

16. The second point that Mr Nasim raises is that had the Secretary of State treated his decision on 14th June 2007 on the 14-year residence application as the first decision, as Mr Nasim says he should have done, the Secretary of State would have reached an appealable decision and the claimant would now have a right of appeal. It may be, as Miss Leek submits, that the decisions in 2003 represent a decision on all aspects of the long term residence concession and properly can be taken as having done so, even though at that stage the claimant was not in a position even to contemplate making a claim under the 14-year provisions. It simply means that he failed for want of years as opposed to failing on some other basis. But even taking Mr Nasim's submission that the Secretary of State treated this as a fresh claim in circumstances where he was not entitled to -- and there would be some room for debate about the construction of the letter that was sent -- it is clear that no appealable decision would have been generated if the letter had been cast as Mr Nasim says it should.

17. The position in relation to that decision is the same as it was in relation to the ten year point under the 1999 Act and the 2003 decision. Immigration decisions are only appealable where they fall within section 82. Mr Nasim suggested that the decision in June 2007, if properly phrased, might have been one within subparagraph (d), namely a refusal to vary a person's leave to enter or remain in the United Kingdom if the result of the refusal is that the person has no leave to enter or remain. But that cannot be right, because the claimant has had no leave to enter or remain in the United Kingdom since 1996, when his asylum claim was rejected. It might also have been suggested that it fell within subparagraph (g), a decision that a person is to be removed by way of directions, but that decision was already taken and represented the appealable decision in August 2003 against which the claimant did in fact appeal. There has been no further decision that a person is to be removed from the United Kingdom. All that has happened is that the suspension of that liability by virtue of the appeal has passed and the judicial review proceedings in relation to the June 2007 decision were underway but are about to conclude. So there is no appealable decision, however it had been cast under the 14-year rule.

18. Mr Nasim finally says that the Secretary of State did not have regard to the true position when saying that no further consideration had been given to the Article 8 points in view of the decision less than two years of ago of the Immigration Judge. The fact is that by the time the Immigration Judge dealt with the matter, the claimant had had 14 years and more in the United Kingdom. The Adjudicator considered his case on that basis for the purposes of Article 8. The 14-year claim of itself could add nothing to that. The chasing correspondence in May and June 2007 added nothing to it. The fact that another two years or so had passed, with the claimant in the same position in those two years as he had been in the preceding 14, would not sensibly have altered an Immigration Judge's view of the proportionality of the claimant being returned.

19. I would also add that both Miss Leek and Mr Nasim accepted that the claimant could, within the Immigration Judge's appeal, have argued that by that time he had accumulated 14 years under the long residence provision and could have argued that removal would not be in accordance with the law, but that is not the way the matter was put. Whether or not that was something that should have been done is not the point, but it does reduce any feelings of anxiety there might be about the approach adopted here

by the Secretary of State. I do not suggest for a moment that there is any legitimate complaint but the opportunity was there and could have been taken if had been thought appropriate to do so.

20. For those reasons, and notwithstanding Mr Nasim's astute advocacy, this claim is not arguable and is dismissed.